

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

RODNEY BROADNX, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 1:22-00437

FEDERAL CORRECTIONAL
INSTITUTION MCDOWELL, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court are defendants' motions to:

(1) dismiss for plaintiffs' failure to comply with Rule 4; and
(2) substitute the United States as the proper party. See ECF
Nos. 5 and 28.

In their opposition to the motion to dismiss, plaintiffs demonstrated that they did comply with Rule 4 within the time period allowed for doing so. See ECF No. 12. Defendants did not file a reply to argue otherwise. The motion to dismiss is **DENIED** as moot.

As for the motion to substitute, plaintiffs have filed a motion to amend, seeking leave of the court to file a second amended complaint. See ECF No. 33. In the motion to amend, plaintiffs seek leave of the court to, among other things, substitute the United States of America as a defendant for FCI McDowell, the Federal Bureau of Prisons, and Collette S. Peters,

in her official capacity as Director of the Federal Bureau of Prisons.

At least part of plaintiffs claims are filed pursuant to the Federal Tort Claims Act ("FTCA"). The only proper defendant in an FTCA action is the United States of America. See Iodice v. United States, 289 F.3d 270, 273 n.1 (4th Cir. 2002) (acknowledging that, as to FTCA claims against the U.S. Department of Veterans Affairs, "the United States is the only proper defendant"). Therefore, the motion to substitute is **GRANTED**. See, e.g., Billups v. United States Postal Service, No. 5:19-CV-188-BO, 2019 WL 3822510, at * (E.D.N.C. Aug. 14, 2019); Cox v. U.S. Marshals Service Headquarters, Civil Action Case No. CCB-11-2659, 2011 WL 6000557, at *1 n.1 (D. Md. Nov. 29, 2011) (substituting United States as defendant in lieu of United States Marshals Service because "[t]he United States is the only proper party defendant in actions brought under the Federal Tort Claims Act").

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record.

IT IS SO ORDERED this 13th day of June, 2023.

ENTER:



David A. Faber
Senior United States District Judge